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**WILLKIE FARR & GALLAGHER**

VIA HAND DELIVERY

January 27, 2000

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Washington, DC 20036-3384

202 328 8000  
Fax: 202 887 8979

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
12th Street Lobby, TW-A325  
Washington, DC 20554

RECEIVED

JAN 27 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**EX PARTE**

Re: Ex Parte Presentation in CC Docket No. 96-98 and WT Docket No. 99-217.

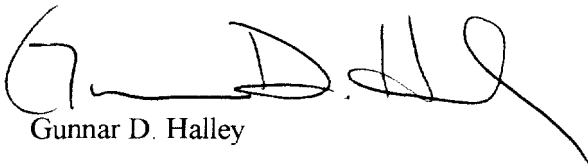
Dear Ms. Salas:

To discuss matters concerning the above-referenced proceedings, Russell Merbeth and Joseph Sandri of Winstar Communications, Inc. and myself, on Winstar's behalf, met today with Jeffrey Steinberg and Joel Taubenblatt of the Wireless Telecommunications Bureau. Specifically, we discussed the need for the Commission to define the incidents of ownership and control of inside wiring in multi-tenant environments. Please find attached two copies of a written summary of our discussion, copies of which were provided to Mr. Steinberg and Mr. Taubenblatt during the course of the meeting.

We also discussed the need for nondiscriminatory telecommunications carrier access to multi-tenant buildings and the difficulties inherent in complete reliance on negotiated resolutions of the issues presented by such access. To that end, please find attached two copies of the Texas Public Utility Commission Staff's proposed building access rules currently under consideration in Texas, copies of which were provided to Mr. Steinberg and Mr. Taubenblatt during the course of the meeting.

In accordance with the Commission's rules, for each above-mentioned docketed proceeding, I hereby submit to the Secretary of the Commission two copies of this notice of Winstar's ex parte presentation.

Respectfully submitted,



Counsel for WINSTAR COMMUNICATIONS, INC.

cc: Jeffrey Steinberg  
Joel Taubenblatt

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INTERPLAY BETWEEN THE UNE REMAND ORDER AND  
THE COMPETITIVE NETWORKS RULEMAKING

- **The FCC should define the incidents of ownership and control of inside wiring in multi-tenant environments.**

Winstar has encountered situations in which it has obtained building owner permission to access a tenant in the building and to use the building's inside wire, but where the process of installation and provision of service to the tenant is impaired by the ILEC. Specifically, the ILEC claims to possess ownership and control over the building's inside wiring and prohibits Winstar from using it. It is often unclear whether the building owner or the ILEC owns a building's inside wiring. In some instances, an express transfer of ownership has occurred, simplifying inside wire ownership identification. Unfortunately, though, in most instances, ownership remains unclear.

Nevertheless, if a building owner has granted Winstar permission to use the inside wiring, the ILEC should not be permitted to deny Winstar's use of that wiring even if the ILEC owns the inside wiring. If an ILEC owns the inside wiring on the customer side of the demarcation point, the FCC has already prohibited ILECs from imposing restrictions on the removal, replacement, rearrangement or maintenance of inside wiring that had ever been installed or maintained under tariff. Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, *Memorandum Opinion and Order*, 1 FCC Rcd 1190 at ¶ 35 (1986) ("*Detariffing MO&O*"). In addition, the FCC held that carriers could not require customers to purchase inside wiring nor could they impose a charge for the use of such wiring. *Id.* Moreover, in those instances in which the demarcation point is located at some point other than the MPOE, such as the customer premises, the ILEC is required to provide telecommunications carriers with unbundled access to the inside wire subloop up to the demarcation point. Given these existing rules, the FCC should clarify that the ILEC cannot restrict, condition, or prohibit the use of inside wiring by CLECs even if the ILEC owns the wiring.

- **The FCC should establish reasonable provisioning intervals and interim proxy rates for inside wiring UNEs.**

Delay caused by ILECs and building owners presents one of the greatest barriers to the competitive provision of facilities-based telecommunications services in multi-tenant buildings. The FCC is to be commended for the inside wiring access rules adopted by the *UNE Remand Order*. To ensure that the pro-competitive rules adopted therein are given operative effect in the marketplace, the FCC should establish the period of time in which an ILEC must provision inside wiring UNEs. Otherwise, ILEC-imposed delays may defeat the Commission's pro-competitive goals.

In addition, while State PUCs undergo the process of establishing rates for inside wire UNEs, the FCC should devise an interim proxy rate (subject to true-up) so that requesting carriers can immediately request and obtain inside wire UNEs. In this manner, the further development of competition will not suffer from the lag time of State PUC implementation (and the incentives of ILECs to lengthen that period of time as much as possible).

- **The FCC should require uniform location of the demarcation point at the minimum point of entry in all multi-tenant environments.**

By designating the MPOE as the demarcation point in all multi-tenant environments, the FCC will reduce uncertainty as to the physical extent of ILEC control and will greatly reduce the severe disparity in the costs and time of access between incumbents and new entrants.

# *Public Utility Commission of Texas*

## **Memorandum**

TO: All Interested Parties in Project No. 21400

FROM: Melanie Malone  
Office of Policy Development

RE: Additional Workshops and Building Tours

DATE: December 30, 1999

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At the December 16, 1999 open meeting, the Commission discussed this Project, and directed Staff to hold additional workshops. Staff intends to hold workshops in Houston and in the Dallas/Fort Worth area in February. Information on the specific times and locations is forthcoming.

The Commission also requested that Staff tour buildings in order to better understand some of the issues in this Project. Staff desires to tour two buildings, in which at least two carriers have located; one residential multi-tenant building and one medium to large office building. Staff would prefer that these buildings be close to the Commission in order to maximize the number of Staff who could participate in the tour. Staff requests that any interested party that would be willing to organize a tour of a building file a letter in this Project, describing the location and type of building and services provided therein, by January 10, 2000.

Q:\opd\PROJECTS\21xxx\21400\tours memo.doc

CHAPTER 26: PROPOSED SUBSTANTIVE RULE APPLICABLE TO  
TELECOMMUNICATIONS PROVIDERS

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

2 § 26.129 Standards for Access to Provide Telecommunications Service at Tenant Request.

4 (a) **Purpose.** The purpose of this section is to implement §§ 54.259, 54.260, and 54.261 of the Texas  
Utilities Code regarding the non-discriminatory treatment of telecommunications utilities by  
6 property owners. This section encourages independent negotiations between property owners and  
telecommunications utilities in reaching agreements regarding the terms and compensation of the  
8 installation of telecommunications equipment. In the event a negotiated agreement cannot be  
reached, this section provides procedures for resolution of these issues.

10 (b) **Application.**

(1) This section applies to the following entities:

12 (A) "Telecommunications utilities" as defined in PURA § 51.001(11) that holds a  
consent, franchise, or permit as determined to be the appropriate grants of  
14 authority by the municipality and holds a certificate if required by PURA;

(B) Public or private owners of commercial property; and

16 (C) Public or private owners of residential property units occupied by three or  
more families.

18 (2) This section does not apply to institutes of higher education.

(c) **Definitions.** The following words and terms, when used in this section, shall have the following  
20 meanings, unless the context clearly indicates otherwise.

(1) **Conduit** – a pipe installed on a Property, in the building between floors, attached to walls,  
22 between buildings, located in the ceiling or floor space of a building, located on the  
customer's premise, or from the public right of way into a building or buildings for the  
24 purposes of containing and protecting cable.

## CHAPTER 26: PROPOSED SUBSTANTIVE RULE APPLICABLE TO TELECOMMUNICATIONS PROVIDERS

### Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

- (2) **Existing Carrier** - a telecommunications utility that is providing telecommunications services to a Tenant on a Property at the time the Requesting Carrier seeks access to a Property. An Existing Carrier may be an incumbent local exchange carrier, a competitive local exchange carrier, or an internet service provider.
- (3) **Property** - a building or buildings that are under common ownership and which are located on a single piece of land, or a campus, or a parcel of land to which access is required for a telecommunications utility to provide telecommunications service.
- (4) **Property Owner**—the owner, or its authorized representative, of a Property (i.e. office building, office complex, industrial park, multiple-dwelling residential complex with three or more families, or other multi-tenant location).
- (5) **Requesting Carrier**—a telecommunications utility seeking access to space in one or more buildings on a Property.
- (6) **Telecommunications Equipment or Facility** - the equipment installed or used by a Existing Carrier or a Requesting Carrier to provide telecommunications services to a Tenant.
- (7) **Tenant** - any occupant of a building on a Property under the terms of a lease with Property Owner or a valid sub-lease agreement.
- (d) **Property Owner's Rights to Manage Access.** The requirements of this section are not intended to eliminate or restrict the Property Owner's rights to manage access to public or private property pursuant to §§ 54.259, 54.260, and 54.261 of the Texas Utilities Code.
- (1) A Property Owner may:
- (A) impose a condition on the utility that is reasonably necessary to protect:
- (i) the safety, security, appearance, and condition of the property; and
- (ii) the safety and convenience of other persons;

**CHAPTER 26: PROPOSED SUBSTANTIVE RULE APPLICABLE TO  
TELECOMMUNICATIONS PROVIDERS**

**Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.**

- 2 (B) impose a reasonable limitation on the time at which the utility may have access to the  
property to install a telecommunications service facility;
- 4 (C) impose a reasonable limitation on the number of such utilities that have access to the  
owner's property, if the owner can demonstrate a space constraint that requires the  
limitation;
- 6 (D) require the utility to agree to indemnify the owner for damage caused installing,  
operating, or removing a facility;
- 8 (E) require the tenant or the utility to bear the entire cost of installing, operating, or removing  
a facility; and
- 10 (F) require the utility to pay compensation that is reasonable and nondiscriminatory among  
such telecommunications utilities.
- 12 (2) A Property Owner may not:
- 14 (A) prevent the utility from installing on the owner's property a telecommunications service  
facility upon a tenant request;
- 16 (B) interfere with the utility's installation on the owner's property of a telecommunications  
service facility upon a tenant request;
- 18 (C) discriminate against such a utility regarding installation, terms, or compensation of a  
telecommunications service facility to a tenant on the owner's property;
- 20 (D) demand or accept an unreasonable payment of any kind from a tenant or the utility for  
allowing the utility on or in the owner's property; or
- 22 (E) discriminate in favor of or against a tenant in any manner, including rental charge  
discrimination, because of the utility from which the tenant receives a  
telecommunications service.
- 24 (e) **Requesting Carrier's Right to Access.**

**CHAPTER 26: PROPOSED SUBSTANTIVE RULE APPLICABLE TO  
TELECOMMUNICATIONS PROVIDERS**

**Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.**

- 2           (1) Upon a tenant request, a Requesting Carrier has the right to install telecommunications equipment  
on the Property in order to provide telecommunications service.
- 4           (2) Upon a tenant request, a Requesting Carrier has the right to install telecommunications equipment  
without interference from the Property Owner except as provided in subsection (d) of this section.
- 6           (3) Upon a tenant request, a Requesting Carrier has the right to install telecommunications equipment  
at non-discriminatory terms, conditions, and compensation rates.

**CHAPTER 26:     PROPOSED SUBSTANTIVE RULE APPLICABLE TO  
TELECOMMUNICATIONS PROVIDERS**

**Subchapter F.     REGULATION OF TELECOMMUNICATIONS SERVICE.**

**(f)     Requirement for Negotiations.**

- 2            (1) **Requirement of Requesting Carrier to Commence Negotiations.** Upon receiving a  
request for telecommunications service from a tenant of a property, the Requesting Carrier  
4            shall notify the owner of the property not fewer than thirty (30) calendar days before the  
proposed date on which installation is to commence. Such notice may be sent via e-mail,  
6            hand delivery, or fax, in addition to sending a copy by certified mail, return receipt  
requested. The Requesting Carrier shall include the following in its notice of intent:
- 8                    (A)     property address and building number (if applicable);
- (B)     proposed timeline of installation of telecommunication equipment;
- 10                  (C)     type of telecommunications equipment to be installed;
- (D)     the proposed location, space requirements, and other specifications of  
12                  identified equipment;
- (E)     conduit requirements, if any;
- 14                  (F)     a copy of §§ 54.259, 54.260, and 54.261 of the Texas Utilities Code and this  
section (Sub. R. § 26.129); and
- 16                  (G)     any other information that would assist the Property Owner.
- (2) **Requirement to Negotiate for 30 Days.** Upon receipt of notice of intent, the Property  
18            Owner and Requesting Carrier shall attempt to reach a mutually acceptable agreement  
regarding the installation of the Requesting Carrier's telecommunications equipment and  
20            reasonable compensation, if any, due the Property Owner as a result of the installation of  
the Requesting Carrier's telecommunications equipment. If such an agreement is not  
22            reached within thirty (30) calendar days of the Property Owner's receipt of the notice of  
intent sent by certified mail, either party may file for resolution with the Commission  
24            pursuant to subsection (i) of this section.



CHAPTER 26: PROPOSED SUBSTANTIVE RULE APPLICABLE TO  
TELECOMMUNICATIONS PROVIDERS

**Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.**

(g) **Parameters for Installation of Telecommunications Equipment.** A Property Owner shall not  
deny access to a Requesting Carrier with the exception of inadequate space or safety concerns.

(1) **Inadequate Space.**

(A) The Property Owner may deny access, within ten (10) calendar days of the Property  
Owner's receipt of the Requesting Carrier's notice of intent sent by certified mail,  
where the space or conduit required for installation of telecommunications equipment is  
not sufficient to accommodate the Requesting Carrier's request.

(B) In the event the Property Owner denies access, the Property Owner shall demonstrate  
that a space constraint requires the denial of access. The Property Owner shall  
demonstrate that a space constraint exists by allowing the Requesting Carrier to inspect  
the space and/or conduit with respect to which the Property Owner asserts that there is  
insufficient room to permit the installation of the Requesting Carrier's  
telecommunications equipment; or through any other method mutually agreed upon by  
the Property Owner and the Requesting Carrier.

(C) Such demonstration shall be completed within five (5) business days of the Requesting  
Carrier's receipt of the Property Owner's denial.

(D) After such determination, if the Requesting Carrier disputes the Property Owner's  
assertion that there is a space limitation, the Requesting Carrier may pursue a  
Commission resolution pursuant to section (i) of this rule.

(2) **Safety**

(A) The Property Owner may deny access, within ten (10) calendar days of the Property  
Owner's receipt of the Requesting Carrier's notice of intent sent by certified mail, where  
the installation of the Requesting Carrier's telecommunications equipment would cause  
an unavoidable circumstance that compromises the safety of the property.

CHAPTER 26: PROPOSED SUBSTANTIVE RULE APPLICABLE TO  
TELECOMMUNICATIONS PROVIDERS

**Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.**

(B) In the event the Property Owner denies access, the Property Owner shall demonstrate

that an unavoidable safety hazard exists and therefore requires the denial of access.

The Property Owner shall demonstrate that a safety hazard exists by allowing a third

party, at the expense of the Requesting Carrier, to inspect the space and/or conduit with

respect to which the Property Owner asserts that there is an unavoidable safety hazard

that restricts the installation of the Requesting Carrier's telecommunications equipment;

or through any other method mutually agreed upon by the Property Owner and the

Requesting Carrier.

(C) Such demonstration shall be completed within ten (10) business days of the Requesting

Carrier's receipt of the Property Owner's denial.

(D) After such determination, if the Requesting Carrier disputes the Property Owner's

assertion that there is a safety hazard, the Requesting Carrier may pursue a Commission

resolution pursuant to section (i) of this rule.

**(h) Parameters for Determining Reasonable Compensation for Access.**

(1) The Property Owner and Requesting Carrier shall attempt to reach a mutually acceptable

agreement regarding reasonable and non-discriminatory compensation due the Property

Owner as a result of the Requesting Carrier's installation of telecommunications

equipment. In determining a reasonable amount, the Property Owner and Requesting

Carrier shall consider the following:

(A) the location and amount of space occupied by the installation;

(B) any evidence that the Property Owner has a specific alternative use for any space

which would be occupied by the telecommunications equipment, the loss of

which will result in a specific quantifiable loss to the owner;

(C) the value of the property before the installation of telecommunications

equipment, and the value of the property subsequent to the installation of the

CHAPTER 26: PROPOSED SUBSTANTIVE RULE APPLICABLE TO  
TELECOMMUNICATIONS PROVIDERS

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

telecommunications equipment, and the method or methods used to determine

such values:

(D) whether the installation of the telecommunications equipment will interfere with  
the use and occupancy of the building, which interference would cause a  
decrease in the rental or resale value of the building; and

(E) any actual costs incurred by the Property Owner directly related to the  
installation of the telecommunications equipment.

(2) The Property Owner shall not impose a fee on the Requesting Carrier solely for the  
privilege of providing telecommunications service on the property.

(3) To the extent that a Requesting Carrier installs telecommunications equipment in an area  
on the Property dedicated to public use or an area provided to an Existing Carrier at no  
charge, the Requesting Carrier shall be allowed to install its telecommunications  
equipment at no charge.

(4) The Property Owner may require a security deposit not to exceed a reasonable estimation  
of the cost of removal of the Requesting Carrier's telecommunications equipment.

(i) **Failure to Reach Negotiated Agreement.**

(1) **Petition to Commission for Resolution of Dispute.** If a mutually acceptable agreement  
regarding the installation of telecommunications equipment, the reasonable compensation  
due the Property Owner as a result of the installation of the Requesting Carrier's  
telecommunications equipment, or other disputed issues is not reached within thirty (30)  
calendar days of the Property Owner's receipt of the notice of intent sent by certified  
mail, either the Property Owner or Requesting Carrier may petition the Commission for  
resolution. The petition shall include proof of the Requesting Carrier's notice to the  
Property Owner in the form of an affidavit and attached copy of return receipt.

**CHAPTER 26: PROPOSED SUBSTANTIVE RULE APPLICABLE TO  
TELECOMMUNICATIONS PROVIDERS**

**Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.**

**(2) Types of Disputes and Information required for each Type of Dispute.**

2           **(A) Installation Dispute.**

- (i)     The Property Owner may deny access consistent with section (g) of this rule.
- 4           (ii)    The Property Owner and Requesting Carrier shall provide the Commission with  
                information specifying the installation related dispute(s) that is preventing a  
6                  negotiated agreement.
- (iii)   The Property Owner and Requesting Carrier shall provide the Commission with  
8                  information supporting their positions in the dispute(s).

**(B) Reasonable Compensation Dispute.**

- 10          (i)     The Property Owner shall provide the Commission the amount of compensation  
                being sought and the basis for such claim, including information supporting the  
12                  factors listed in section (h) of this rule.
- (ii)    The Requesting Carrier shall provide the Commission with information  
14                  supporting the amount of compensation in which it deems reasonably  
                compensates the Property Owner for the installation of its telecommunications  
16                  equipment.
- (iii)   Nothing in this subsection may impair or delay the right of the Requesting  
18                  Carrier to install, maintain, and remove telecommunications equipment, or to  
                provide telecommunications service to a requesting tenant, during the pendency  
20                  of the proceeding, upon approval by the Commission.

**(C) Other Disputed Issues.**

- 22          (i)     The Property Owner and Requesting Carrier shall provide the Commission with  
                information specifying the dispute(s) that is preventing a negotiated agreement.

**CHAPTER 26: PROPOSED SUBSTANTIVE RULE APPLICABLE TO  
TELECOMMUNICATIONS PROVIDERS**

**Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.**

- (ii) The Property Owner and Requesting Carrier shall provide the Commission with  
information supporting their positions in the dispute(s).

**(3) Procedure.**

- (A) The Commission may commence a hearing to determine the facts of the dispute(s).

- (B) Failure to petition the Commission within ninety (90) calendar days of the Property  
Owner's receipt of the notice of intent sent by certified mail shall be deemed a waiver  
by the Property Owner of the right to deny access of the Requesting Carrier's  
installation of telecommunications equipment.

- (C) Failure to petition the Commission within ninety (90) calendar days of the Property  
Owner's receipt of the notice of intent sent by certified mail shall be deemed a waiver  
by the Property Owner of the right to seek compensation for the Requesting Carrier's  
installation of telecommunications equipment.

- (j) **Post Agreement Dispute Resolution.** Either the Requesting Carrier or Property Owner may  
file a written request for mediation or informal dispute resolution at the Commission, or a  
formal complaint, at any time after an agreement has been signed.

- (k) **Administrative Penalties.** In addition to the Requesting Carrier's and Property Owner's right  
to seek dispute resolution under Paragraph (j), the Administrative Penalties provisions set out  
under § 22.246 of this title (relating to Administrative Penalties) shall apply to any violation of  
this rule.

**Project No. 21400**  
**Workshop**

**February 1, 2000**  
**9:00am – 5:00pm**  
**CHR**

**General Guidelines**

- The purpose of the meeting is to discuss the Staff Draft Rule in Project No. 21400. Rulemaking regarding Building Access pursuant to PURA §§54.259, 54.260 and 54.261.
- A court reporter will prepare a transcript covering the session. Contact the reporter to purchase a transcript. (Kennedy Reporting at 512-474-2233)
- To facilitate the written record, please provide a business card to the court reporter and identify yourself and who you represent each time you speak.
- Persons with questions relating to Project 21400 should contact Melanie Malone in the Office of Policy Development at (512) 936-7247 or via e-mail at [melanie.malone@puc.state.tx.us](mailto:melanie.malone@puc.state.tx.us).

**Agenda**

9:00-9:15	Introduction of team members and participants General guidelines for the meeting
9:15-10:00	Discuss sections (a) and (b) of Staff Draft Rule
10:00-10:30	Discuss section (c) of Staff Draft Rule
10:30-10:45	Discuss section (d) Staff Draft Rule
10:45-11:00	Break
11:00-11:15	Discuss section (e) of Staff Draft Rule
11:15-12:15	Discuss section (f) of Staff Draft Rule
12:15-1:15	Lunch
1:15-2:00	Discuss section (g) of Staff Draft Rule
2:00-3:00	Discuss section (h) of Staff Draft Rule
3:00-3:15	Break
3:15-4:15	Discuss section (i) of Staff Draft Rule
4:15-4:30	Discuss section (j) of Staff Draft Rule
4:30-4:45	Discuss section (k) of Staff Draft Rule
4:45-5:00	Wrap-up and adjourn

**PUBLIC UTILITY COMMISSION OF TEXAS  
PROJECT NUMBER 21400  
PUBLIC NOTICE OF WORKSHOP REGARDING BUILDING ACCESS PURSUANT  
TO PURA §§54.259, 54.260, AND 54.261**

The Staff of the Public Utility Commission of Texas (commission) will hold a workshop to discuss the rulemaking regarding building access pursuant to PURA §§54.259, 54.260, and 54.261 on Friday, February 11, 2000, at 10:00 a.m. at the Greater Houston Partnership, 1200 Smith, Suite 700, Houston, Texas 77002. Project Number 21400, *Rulemaking Regarding Building Access*, pursuant to the Public Utility Regulatory Act §§54.259, 54.260, and 54.261, Texas Utilities Code Annotated §§11.001-64.158 (Vernon 1998 & Supp. 1999) (PURA), has been established for this proceeding.

At the December 16, 1999 open meeting the commission directed Staff to conduct additional workshops outside of Austin with interested parties to discuss Staff's draft rule regarding building access. This workshop is designed to facilitate involvement by interested parties that otherwise may have little, if any, participation in this Project.

The above referenced draft rule is available in Central Records and on the commission web site, under Project Number 21400, at <http://www.puc.state.tx.us/rule/rulemake/21400/21400.cfm>. The draft rules will assist in structuring the workshop discussion. An agenda for the workshop will also be available in Central Records and on the commission web site, under Project Number 21400, no later than January 31, 2000.

Questions concerning the workshop or this notice should be referred to Melanie Malone, Office of Policy Development, (512) 936-7247. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

**ISSUED IN AUSTIN, TEXAS ON THE 18th DAY OF JANUARY, 2000 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**



**PUBLIC UTILITY COMMISSION OF TEXAS  
PROJECT NUMBER 21400  
PUBLIC NOTICE OF WORKSHOP REGARDING BUILDING ACCESS PURSUANT  
TO PURA §§54.259, 54.260, AND 54.261**

The Staff of the Public Utility Commission of Texas (commission) will hold a workshop to discuss the rulemaking regarding building access pursuant to PURA §§54.259, 54.260, and 54.261 on Monday, February 7, 2000, at 10:00 a.m. at the Greater Dallas Chamber of Commerce, Renaissance Tower, Suite 2000, 1201 Elm Street, Dallas, Texas 75270. Project Number 21400, *Rulemaking Regarding Building Access* pursuant to the Public Utility Regulatory Act §§54.259, 54.260, and 54.261, Texas Utilities Code Annotated §§11.001 - 64.158 (Vernon 1998 & Supp. 1999) (PURA), has been established for this proceeding.

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**ISSUED IN AUSTIN, TEXAS ON THE 18th DAY OF JANUARY, 2000 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**